

48A C.J.S. Judges § 317

Corpus Juris Secundum | August 2023 Update

Judges

Joseph Bassano, J.D.; Khara Singer-Mack, J.D.; Thomas Muskus, J.D; Karl Oakes, J.D. and Jeffrey J. Shampo, J.D.

IX. Disqualification to Act

D. Objections to Judge and Proceedings Thereon

2. Mode and Sufficiency of Raising Objection

a. General Considerations

§ 317. Filing of disqualification application

[Topic Summary](#) | [References](#) | [Correlation Table](#)

West's Key Number Digest

West's Key Number Digest, [Judges](#)  51(3)

In connection with a petition, application, or affidavit for disqualification of a judge, compliance must be had with applicable filing requirements.

In order for a party to be heard on an application to disqualify a judge, the application must first be timely¹ filed with the court,² and failure to file an affidavit defeats a party's attempt to recuse a judge.³ It has been stated that an affidavit filed by counsel rather than by a party to a proceeding is defective,⁴ but it has also been held that the affidavit may be filed by the attorney of the objecting party.⁵ The fact that affidavits are marked "filed" by a clerk in one division of a district court does not constitute "filing" in another division of the court where the case involved is pending.⁶ While it has been held that the attention of the court should be called to the filing of the affidavit,⁷ it has also been held that there is no such requirement.⁸

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Footnotes

¹ U.S.—Netsphere, Inc. v. Baron, 703 F.3d 296 (5th Cir. 2012); Armenian Assembly of America, Inc. v. Cafesjian, 783 F. Supp. 2d 78 (D.D.C. 2011).

Ga.—Horne v. State, 318 Ga. App. 484, 733 S.E.2d 487 (2012).

- 2 Ill.—*People v. Cavin*, 28 Ill. App. 3d 863, 329 N.E.2d 382 (1st Dist. 1975).
- Okla.—*Ex parte Young*, 1958 OK CR 31, 325 P.2d 85 (Okla. Crim. App. 1958).
- Filing essential for appeal**
- Wis.—*State v. White*, 53 Wis. 2d 549, 193 N.W.2d 36 (1972).
- Substantial compliance as to time of filing**
- Mo.—*State ex rel. Interstate Motor Freight System, Inc. v. Hall*, 409 S.W.2d 678 (Mo. 1966).
- 3 U.S.—*U.S. v. Azhocar*, 581 F.2d 735 (9th Cir. 1978).
- 4 U.S.—*Paschall v. Mayone*, 454 F. Supp. 1289 (S.D. N.Y. 1978).
- 5 Ariz.—*Consolidated Carpet Corp. v. Superior Court In and For Maricopa County*, 13 Ariz. App. 429, 477 P.2d 548 (Div. 1 1970).
- 6 U.S.—*U.S. v. 16,000 Acres of Land, More or Less, in LaBette County, Kan.*, 49 F. Supp. 645 (D. Kan. 1942).
- 7 Ind.—*State ex rel. Gmil v. Markey*, 230 Ind. 68, 101 N.E.2d 707 (1951).
- Nev.—*State ex rel. Stokes v. Second Judicial Dist. Court in and for Washoe County*, 55 Nev. 115, 27 P.2d 534 (1933).
- 8 N.M.—*Rivera v. Hutchings*, 1955-NMSC-049, 59 N.M. 337, 284 P.2d 222 (1955).

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